APPENDIX A.

Opinions of Illinois Supreme Court in Earlier and Concurrent Companion Cases.

Callahan. *People ex rel. Callahan v. Gulf, Mobile and Ohio Railroad Company,* 8 Ill. 2d 66, 132 N. E. 2d 544.

This was the initial tax objection case following the Butler Full valuation reform legislation of 1945, and was based upon the full valuation of railroad property by the Department, absent the power of equalization to reduce railroad full value assessments to assessment levels of locally assessed property. The railroad appealed from an order striking the objection based upon the discrimination under the statute between the full value assessment of the railroad and a less than 55% level of assessment of locally assessed property. The right to the remedy was questioned by the People.

> "The parties agree, as indeed they must, that the Revenue Act requires all valuations upon which tax rates are developed and extended to be at full, fair cash value (Ill. Rev. Stat. 1951, chap. 120, pars. 501, 502). By its stricken objections, appellant, whose property was assessed at State level along with other railroads, alleged that its own property has been assessed at full, fair cash value but that it had been excessively and illegally taxed when locally assessed property in the county was fraudulently and intentionally undervalued at less than full, fair cash value. * * * Appellant objected against paying taxes on rates higher than would have been developed if locally assessed property had been at one hundred percent full, fair cash value in the taxing formula by which rates were computed. Translated into figures, it is appellant's contention that because locally assessed property was fraudulently and intentionally valued at less than full, fair cash value, the resulting increase in rates caused its tax bill of $45,017.81 to be excessive by $18,578.38.
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> "Some question is raised as to whether appellant, who admits that its own property was correctly assessed, has pursued the proper remedy. We find, however, that this court has observed on several occasions that since valuations must be the result of honest judgment and not of mere will, it follows

that an assessment may be impeached both when fraudulently made at too high a rate, and when fraudulently made at too low a rate. (*People's Gas Light and Coke Co. v. Stuckart*, 286 Ill. 164, 174; *Chicago, Burlington & Quincy Railroad Co. v. Cole*, 75 Ill. 591, 594.) Further, in a long line of cases, it has been held that the question of discrimination in assessments may properly be raised on an application for judgment for delinquent taxes. (See: *People ex rel. Ross v. Chicago, Milwaukee, St. Paul and Pacific Railroad Co.*, 381 Ill. 58, 61, and cases there cited.) Here the essence of appellant's objections is that there was a fraudulent discrimination resulting from the undervaluation of locally assessed property which had the effect of denying appellant equal protection of the Revenue Act, and of subjecting it to taxation lacking in both constitutional and statutory uniformity. We conclude that a proper remedy has been pursued" (pp. 67-69).

C&NW 1953 Valuation Case. *C&NW Ry. Co. v. Dept. of Revenue*, 6 Ill. 2d 278, 128 N. E. 2d 722, Certiorari denied 351 U. S. 950. Rehearing denied 352 U. S. 859.

In this case, the railroad contended that its assessed valuation exceeded the full fair cash value of its property, and complained of the use of reproduction cost in the formula and the use of judgment in reducing the formulaic result by a smaller percentage in its valuation than in the valuation of 41 other railroads, since the basis of the judgment reduction was not disclosed, although the railroad had sought such disclosure in the examination of the railroad assessor, Raymond S. Danis.

"Plaintiff also appears to suggest that a discrimination has occurred with respect to the Department's practice in setting its final assessment at a figure which is lower than the figure produced by its formula. In plaintiff's case there was a reduction of $10,980,000, about 11 per cent. Forty-one of the other railroads received reductions which were larger percentagewise. The remaining lines received smaller reductions. The record does not disclose the basis for these reductions, either in plaintiff's case or in the case of other railroads. A difference not shown to be the result of caprice or intentional discrimination is not enough to invalidate the assessment. (*Cf. Department of Revenue v. Warren Petroleum Corp.*, 2 Ill. 2d 483, 488.) Plaintiff points out that as a result of the various reductions the final assessment of thirty-seven of the lines is a figure approximately equal to, or less than, the figure which

would have been obtained had the Department ignored reproduction cost in its formula. The implication, which is not expressly drawn by plaintiff, is that the Department, under the guise of making a reduction in assessments has in fact applied to railroads other than the plaintiff a formula based only on capitalized earnings and security prices. From what we have already said it is clear that this charge must be rejected. It is unsubstantiated in the record before us, and the reductions made by the Department may well rest on reasonable, though undisclosed grounds" (pp. 289-290).

Burlington 1957 Valuation Case. *CB&Q RR. Co. v. Dept. of Revenue,* 17 Ill. 2d 376, 161 N. E. 2d 838. The formulaic average had been reduced from $195,183,000 to $147,000,000, which the railroad contended was excessive. The Burlington contended that the Department should equalize this valuation further to conform to the state-wide average level of assessment of locally assessed property.

"Plaintiff is an interstate railroad operating in 12 States. In determining the 1957 assessed value of its Illinois operating property, the Department took into account: (1) the capitalized value of the average of net system railway operating income for the past five years; (2) the market value of stock and debt, using a five-year average; (3) the cost of reproduction less depreciation of physical property located in Illinois. An allocation fraction was then applied to the first two items to determine the portion of the total system value represented by Illinois assets, and a judgment factor was used which substantially reduced the average of the three items. This method of valuing railroad operating property is used in assessing all railroads in Illinois, and it complies with the statutory requirements. *Chicago and North Western Railway Co. v. Department of Revenue,* 6 Ill. 2d 278" (p. 379).

Pointing out that the 1945 Butler Reform Legislation had terminated the previous authority and duty of the Department to equalize and thus secure uniformity under Sec. 1, Art. IX, of the State Constitution (or equal protection and due process under the State and Federal Constitutions), the Court found that the Department could not assess or equalize railroad property at less than the statutory standard of full fair cash value, and confirmed the remedy of tax objection to meet the alleged discrimination as approved in **Callahan.**

"What the court referred to as the "recognized custom" of the State Board of Equalization and the Tax Commission in prior years, to debase or equalize assessed valuations of railroad operating property below full value in order to achieve uniformity with local assessments, is no longer permissible under the Revenue Act. Compare Ill. Rev. Stat. 1937, chap. 120, par. 56.8, in effect when *Mobile and Ohio Railroad Co. v. Tax Commission*, 374 Ill. 75, was written, with Ill. Rev. Stat. 1955, chap. 120, par. 567. With the enactment of the Butler amendments to the Revenue Act in 1945, the General Assembly required that all valuations upon tax rates are extended must be at full, fair cash value. It is the duty of the Department of Revenue to carry out the statutory mandate. Assessments made by the Department must be at full value (Ill. Rev. Stat. 1955, chap. 120, pars. 502, 561) and local assessments must be equalized by the Department to full value by increasing or reducing the aggregate assessed valuations made in the several counties. Ill. Rev. Stat. 1955, pars. 627, 630.

"The Department, however, refused to consider the plaintiff's evidence on the ground that the hearing requested by the plaintiff was concerned with the Department's duty to assess the value of railroad operating property and not with its duty to equalize local assessments throughout the State to full value. We think the Department was correct. It has no authority to reduce its assessed valuation of the plaintiff's property to less than full value. And the time sequence prescribed by the Revenue Act for local assessment of property makes it unlikely that the various county equalization factors will have been determined at the time the Department is valuing railroad property. (Cf. Ill. Rev. Stat. 1955, chap. 120, pars. 581, 588, 591, 592, 609, 627, 629a; *People ex rel. Tennyson v. Texas Co.*, 406 Ill. 120.) But appropriate remedies are available if the plaintiff's property is in fact bearing a disproportionate share of the tax burden in some taxing districts. Plaintiff may petition the Department for a reconsideration of the equalization multiplier certified to a county clerk for application to local assessments. (Ill. Rev. Stat. 1955, chap. 120, par. 629a.) And such an objection may also be raised to a county collector's application for judgment and order of sale of its real estate. *People ex rel. Callahan v. Gulf, Mobile and Ohio Railroad Co.*, 8 Ill. 2d 66" (pp. 390-391).

Hillison. ***People ex rel. Hillison v. CB&Q RR. Co.*****, 22 Ill. 2d 88, 174 N. E. 2d 175.**

The Burlington here objected to 1958 taxes in Lee County, Illinois. Counsel for the People assisting the State's Attorney was the attorney for the State Depart-

ment of Revenue and also an Assistant Attorney General. Here the railroad pursued on its 1958 taxes the remedy of Callahan to which it had been referred by the Illinois Supreme Court in its 1957 valuation case, 17 Ill. 2d 391. The People contended that neither the uniformity clause nor the due process or equal protection provisions of the State and Federal Constitutions applied to require equity on the level of assessments, since railroad property could be properly assessed and taxed as a separate class, also, that, since the Department had, through judgment, debased its equalization factor to produce a level of assessment of less than 55% of full value for locally assessed property, the Court should assume that the reduction resulting from the use of judgment in the valuation of railroad property similarly produced a debased assessment from full value. The Court held that the discrimination complained of was founded upon the Illinois Revenue Act, as amended in 1945, and not on Constitutional grounds.

> "Before dealing with the main substantive question, it is necessary to dispose of one further argument of plaintiff. Plaintiff, relying on certain language in *People ex rel. Prindable v. Union Electric Co.*, 392 Ill. 271, argues that the constitution does not require railroad property to be assessed and taxed uniformly with other property, but that railroad property is a separate class, and that all that the constitution requires is uniformity within the class. Whether the legislature might constitutionally have provided for the assessment of railroad property at its full value while other property is assessed at only 55% of full value is not before us. The legislature has not so provided. The statute requires all property to be assessed at its full value, and the trial court found that the Department has failed to comply with the statute. It remains to be considered whether the findings of the trial court are supported by the evidence. * * * (p. 96).
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> "The record shows that the Department, in assessing defendant's railroad property, initially computed the average of three factors which this court has upheld as properly bearing on the valuation of railroad property. (*Chicago and North Western Railway Co. v. Department of Revenue*, 6 Ill. 2d 278). These three factors are (1) capitalized value of earnings, (2) market value of stock and debt, and (3) reproduction cost, less depreciation, of the operating property located in Illinois. The average of these factors resulted in an initial

figure of $205,153,000. Thereafter, in the exercise of its "judgment factor," the Department arrived at an assessment of $147,000,000 for defendant's railroad property for 1958. Plaintiff argues, in effect, that if the ratio studies of the Department are to be accepted as indicating that locally assessed property was equalized at no more than 55% of full value, then the average figure of $205,153,000 should be accepted as the actual value of defendant's property, so that the final assessment of defendant's property at $147,000,000 represented only about 73% of its full value.

"This argument has considerable surface appeal, but we cannot agree with it as applied to the particular situation. In considering both the assessment of railroad property and the equalization of other property, there is an initial presumption that the Department complied with its statutory duty. Therefore, in the absence of evidence to the contrary, it will be presumed both that defendant's property was assessed at full value and that locally assessed property was equalized at full value. In the case of the locally assessed property the evidence presented by the defendant, including the ratio studies of the Department, was deemed sufficient by the trial court to overcome the *prima facie* presumption. No evidence was introduced by plaintiff. The trial court therefore found that locally assessed property was equalized by the Department at not more than 55% of full value. We believe the trial court was warranted in so finding (99-100).

"The valuation of railroad property poses a different problem. Here the concept of market value has little practical application. Since railroads are not bought and sold on the market, the legislature has provided that their fair cash value shall be determined by the Department of Revenue (Ill. Rev. Stat. 1957, chap. 120, par. 561), and reasonable discretion must be given to the Department in performing this task. The complex questions involved in assessing railroads have been the subject of recent litigation in this court. (*Chicago and North Western Railway Co. v. Department of Revenue*, 6 Ill. 2d 278; *Chicago, Burlington & Quincy Railroad Co. v. Department of Revenue*, 17 Ill. 2d 376.) We have approved the use by the Department of a consideration among other things of the three factors of (1) capitalized value of earnings, (2) market value of stock and debt, and (3) reproduction cost, less depreciation. The fact that these have been recognized as factors which may properly be considered by the Department in assessing railroad property, however, does not mean that the average of these three factors or any other formula making use of them will necessarily equal or will be presumed to be the same as their actual value. Since there is no presumption that the average of these factors, or $205,153,000, was the actual value of defendant's property, the fact that the Department finally assessed defendant's property at a lesser figure does not indicate that the property was assessed at less than its full value and

does not overcome the presumption that the Department properly assessed defendant's property at its full value" (pp. 101-102).

Kohorst. *People ex rel. Kohorst v. GM&O RR. Co., and C&NW Ry. Co.*, 22 Ill. 2d 104, 174 N. E. 2d 182.

The GM&O and C&NW railroads here appealed the decision of the Sangamon County Court overruling their objections to 1957 taxes based on **Callahan.** The case was submitted concurrently with **Hillison** and was decided on the same day. The availability of the remedy was under direct attack by the cross appeal of the People. The Court held the remedy to be based upon the Illinois statute, as amended in 1945, not the conformity or equal protection or due process guarantees, and rejected any implication of the debased value of the railroad property because of "judgment" in the Department's assessments of the complaining railroads.

"We are fully aware that relief by way of tax objection is a cumbersome and ponderous process. Nevertheless, it is a legal remedy available to objectors and they have seen fit to pursue it. We now turn to the question of whether they have sustained the burden of proving gross discrimination amounting to constructive fraud.

"In order to establish their case objectors must show the level at which their property and that of locally assessed property was assessed, and that the difference was grossly discriminatory and hence constructively fraudulent. We will first consider the assessment of the railroads' properties.

"It is the duty of the Department of Revenue to assess all railroad property, other than noncarrier real estate, at its fair cash value, (Ill. Rev. Stat. 1957, chap. 120, par. 561) and the several factors used by the Department to determine such value have been approved by this court. (*Chicago and North Western Railway Co. v. Department of Revenue*, 6 Ill. 2d 278; *Chicago, Burlington & Quincy Railroad Co. v. Department of Revenue*, 17 Ill. 2d 376.) The official reports of the Department state that objectors' properties were assessed at full, fair cash value, as do letters certifying the assessed values for the period of 1945 to 1957. There is a presumption of statutory compliance, and the testimony of Raymond S. Danis, railroad assessor of the Department, verifies the full valuation. There is no evidence in the record to overcome the presumption and

proof, and we must conclude that objectors' property was assessed at 100%. * * * (p. 109).

"In deciding the level to be used it must be borne in mind that this is not a case of equalization but is the seeking of a formula to provide a refund of discriminatory taxes" (p. 113).

Wenzel. *People ex rel. Wenzel v. C&NW Ry. Co.*, 28 Ill. 2d 205, 190 N. E. 2d 780.

The C&NW here pursued the remedy of **Callahan** in objecting to its 1956-1959 taxes in Macoupin County, Illinois. Here, although the railroad's valuations were attacked in the lower Court, the People conceded full valuation of railroad property in the Supreme Court and contested the procedures of the Department in the making of sales-assessment ratio studies. The Court held that the State itself was a nominal and interested party to the proceeding and could not be excused from a failure to produce any evidence in its files bearing upon the issue before the Court and rejected criticism of methods used by the Department performing its statutory functions.

"We recognize that most courts, as a condition for such exception, require that the mass of documents thus summarily received in evidence be placed in the hands of the court, or at least be made accessible to the opposing party in order that the correctness of the evidence may be tested by such inspection as is desired. (4 Wigmore on Evidence, 3rd ed., sec. 1230.) This condition was met here, particularly when we consider that the State, which is both the nominal and an interested party in tax objection proceedings, (*People ex rel. Murray v. City of St. Louis*, 297 Ill. 199, 201-202,) has at all times had the mass and volume evidence at its disposal. * * * (p. 213).

"At best the evidence shows two accepted methods by which the ratio between full and assessed value may be determined, each with its advantages and each with its disadvantages, and it is the decided weight of the evidence in this record that the sales-assessment method is the most widely accepted and used. Our statute requires only that the Department use such means as it deems 'proper and reasonable' to make its studies on assessed valuations, and a mere difference in opinion as to what is the best or most reasonable method is not sufficient to bring the matter within the range of judicial review. (Cf. *Schreiber v. County of Cook*, 388 Ill. 397, 311)" (p. 216).

Enrietta. *People ex rel. Enrietta v. GM&O RR. Co.*, 29 Ill. 2d 605, 195 N. E. 2d 174.

In this case, the GM&O pursued the remedy of **Callahan** in objecting to the 1958 discriminatory taxation of its property in Grundy County, Illinois. The People contested the full valuation assessment of the railroad on the basis of the testimony of two expert witnesses, each of whom pursued a different formula from that of the department and who also differed between themselves. Each gave the cost factor less than ⅓ weight and characterized the Illinois ⅓, ⅓, ⅓ formula as archaic, and neither applied judgment to his formulaic result. All of the official documentary evidence before the Court in the instant case on railroad valuations except the datum sheets of other railroads and for other years and the reports of the Illinois Tax Commission prior to 1939, was present in **Enrietta.**

> "Raymond S. Danis, railroad assessor superintendent of the Department until his retirement on November 15, 1960, has been in railroad valuation work since 1927. As such assessor he assembled all data and prepared his opinion of value. He testified that several factors have been used for more than 30 years in the assessment of railroad property in Illinois, including a judgment factor, but that the primary one is capitalized income. The various factors made up a formula to which the judgment factor was then applied, but he emphasized that the formulaic result did not represent assessment value, and was a guide to be used for comparison purposes. Danis testified unequivocally that in his judgment the assessment of $49,700,000 represented the full, fair cash value of the objector's property in Illinois for 1959.
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> "James R. Pollack, a city engineer and city manager prior to 1952, was called by the collector. * * * Martin D. Miller, an engineer and appraiser who is a partner in a consulting firm, was also called. * * * (p. 607). Each of these witnesses considered the Illinois system archaic and not adapted to modern conditions, but were not in agreement as to a proper formula to be used. * * * Neither applied a judgment factor and both indicated that the Department's application of that factor constituted debasement and equalization. * * *
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> "A careful review of the entire record leads to the inevitable conclusion that judgment must be used by appraisers in the intricate problem of arriving at an assessed valuation of a rail-

road, whether it be by using various factors, then applying the judgment factor as is done in Illinois, or the choosing of a percentage for capitalizing net operating income and the fixing of the percentage weight to be given the reproduction cost factor.

"The Department has chosen a method to carry out the statutory mandate and has used it for many years. That method has received the tacit approval of this court in a number of cases. (See *Chicago and North Western Railway Co. v. Department of Revenue*, 6 Ill. 2d 278; *Chicago, Burlington & Quincy Railroad Co. v. Department of Revenue*, 17 Ill. 2d 376; *People ex rel. Hillison v. Chicago, Burlington and Quincy Railroad Co.*, 22 Ill. 2d 88; *People ex rel. Kohorst v. Gulf, Mobile and Ohio Railroad Co.*, 22 Ill. 2d 104.) This attack by the collector upon the method of valuation used by the Department charged with that duty by the State falls short of overcoming the presumption. We are of the opinion that the record bears out the Department's valuation as being the full, fair cash value of the objector's Illinois property" (pp. 608-609).

Korzen. *People ex rel. Korzen v. CB&Q RR. Co.*, 32 Ill. 2d 554, 209 N. E. 2d 649.

The Burlington here objected to 1957 taxes in Cook County, Illinois and pursued the remedy in **Callahan**. The evidence offered by the People in **Korzen** including annual reports to the Illinois Tax Commission and the Department of Revenue, datum sheets, graphs, questionable, suppositious railroad sales-assessment ratio studies and the prior testimony of Danis in **Hillison** was imported to Madison County and admitted in the subject cases. Except for some railroad data originating with the I. C. C. and the testimony of the witnesses Stiles and Hulman, and exhibits relating to their testimony, the People's evidence in **Korzen** and **Musso** (the instant case), is practically identical. **Korzen** was submitted and considered at the same term of the Illinois Supreme Court as **Musso** and the opinion in each case refers to the other. In **Musso** there was offered by the railroads and considered as admissions against interest the much earlier testimony of Danis appearing as railroad assessor and testifying on behalf of the People as admissions against interest at the

trial of six GM&O valuation tax objections for the years 1952-1957 in Madison County. In **Korzen**, an association of school boards was permitted to file briefs as *amici curiae* to urge that the Court re-examine the principles announced in the above cited precedent cases, because of the claimed financial impact of a reversal of the Cook County decision.

> "In addition to the documentary evidence, the objector offered the evidence deposition of Raymond S. Danis, former Supervisor of Railroad Assessment, and Railroad Assessment Supervisor from 1948 to 1960, retired, who was not living at the time this case was heard. He prepared the data sheets upon which was computed a 5-year average of income capitalized at 6%, a 5-year average of market value of stock and debt less nonoperating properties, and the cost of reproduction depreciated of the Illinois property, as furnished by the Interstate Commerce Commission. The system factors of capital and market value were then allocated to Illinois and the Illinois costs of reproduction depreciated were added and the straight average of the three was determined. The straight average was not the assessment and neither was any of the three indicators considered alone. He used the average as a guide and applied his judgment to produce a recommended assessment value to the Director. His recommendations were usually followed. In the event the carrier protested and asked for a hearing, he and the Director would hear the protest and come to a conclusion. He cited as an example the Burlington's 1957 assessment which he fixed at $147,100,000 and following a hearing the Director reduced it to $147,000,000. Danis unequivocally stated that the resultant final assessment was the full fair cash value of 100%, and that there was no attempt to equalize such assessments with locally assessed property.
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> "At this point we think it appropriate to consider the Collector's attempt to impeach Danis by showing that his testimony in the Lee County *Hillison* case in 1960 was inconsistent with his evidence deposition given in this case in 1962 shortly before his death. His testimony in that case was introduced here. The Collector asserts that it indicated that another factor taken into consideration in arriving at the final assessment was a desire of the Department for continuity of assessments. Not a question was asked of the witness to lay a foundation for impeachment, and his death prevents an explanation. Under such circumstances the impeachment evidence is inadmissible. *Cf. People v. Moses*, 11 Ill. 2d 84; *Ayers v. Watson*, 132 U. S. 394, 33 L. ed. 378, 10 S. Ct. 116.
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> "This court has given specific approval to the factors used by the Department of Revenue to arrive at railroad valuations in *Hillison, Enrietta* and other cases. And where the Depart-

ment assesses a railroad's operating property in accordance with the recognized and approved factors, it will be presumed to have been assessed at full value as required by statute. *People ex rel. Hillison v. Chicago, Burlington and Quincy Railroad Co.*, 22 Ill. 2d 88; *People ex rel. Kohorst v. Gulf, Mobile and Ohio Railroad Co.*, 22 Ill. 2d 104.

"We are aware of the impact of an adverse holding on the interested taxing bodies but, as readily recognized by *amici curiae*, our decision cannot be based upon their financial needs. *Amici* argues 'the great improbability of accuracy here of presumptions traditionally indulged with respect to the acts of public officials and the contents of public records.' Nevertheless, such a presumption has an important role in our jurisprudence and cannot be ignored. Here, there is no competent evidence to overcome the presumption and, in fact, it is supported by Raymond L. Danis, an expert in this field, who prepared the assessment on behalf of the People through the Department of Revenue" (pp. .....).

APPENDIX B.

Applicable Provisions—Illinois Constitution and 1939 Revenue Act.

Constitution of Illinois 1870.

ARTICLE IX.

Revenue.

"§ 1. The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—*such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise;* * * * (Emphasis added), 1965 Ill. Rev. Stat., p. 21.

Revenue Act of 1939 as enacted and in force 1957-1962, incl. Chap. 120, Anno. Stat., or Rev. Stat. of 1961.

RULES FOR VALUING TAXABLE PROPERTY.

§ 501. Valuation of real property

Real property shall be valued as follows:

(1) Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale.

(2) Each taxable leasehold estate shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale.

(3) Each building or structure which is located on the right of way of any canal, railroad or other company leased or granted to another company or person for a term of years, shall be valued at its fair cash value, estimated at the price such building or structure and lease or grant would bring at a fair, voluntary sale.

(4) Any real property on which there is a coal or other mine, or stone or other quarry, shall be valued at its fair cash value, estimated at the price such property, including the mine or quarry, would bring at a fair, voluntary sale.

(5) In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement shall be deducted in the valuation of such property. (§ 20, as amended in 1945.)

(Subsequent Amendment of 1965 added par. (5) on public easements not relevant.)

§ 502. Valuation of personal property

Personal property shall be valued as follows:

(1) All personal property, except as herein otherwise directed, shall be valued at its fair cash value. * * * (§ 21).

Valuation of Railroad Property.

§ 561. Method of determining fair cash value

The Department shall assess all property owned or used by railroad companies operating within this State, as of April first annually, except property found by the Department to be non-carrier real estate as hereinabove defined.

The Department shall, in determining the fair cash value of the property assessed by it, value all the property of any railroad company as a unit, but shall make due allowance for any non-carrier real estate.

For the purpose of determining the fair cash value of the property of any railroad company the Department shall take into consideration the actual or market value of the shares of stock outstanding, the actual or market value of all bonds outstanding and all other indebtedness as shall be applicable, for operating the road, provided, in determining the market value of any such stock or indebtedness the Department shall consider quotations for the next preceding five years; the net earnings of the company during the five calendar years preceding the assessment date; and such other information as the Department may consider as bearing on the fair cash value of the property: Provided, that the facts hereinbefore named shall not be conclusive upon the Department in determining the fair cash value of the property of a railroad company. The assessment by the Department shall include capital stock and all other property of railroad companies except such property as is found by the Department to be non-carrier real estate as hereinbefore defined; Provided that only so much of the intangible personalty of foreign corporations as has a business situs in Illinois shall be included and so much of the intangible personalty of domestic corporations as has a business situs in other states shall not be included. (§ 80, as amended in 1943 and in force prior to July 1, 1963.)

(As in force prior to equalization amendment of July 1, 1963.)

§ 563. Railroads' annual statement to Department of Revenue

In the month of April of each year every railroad company in this State shall return to the Department, in addition to any other information required by this Act, sworn statements or schedules as follows:

(1) The amount of capital stock authorized and the number of shares into which such capital stock is divided.

(2) The amount of capital stock issued and outstanding.

(3) The market value, or if no market value then the estimated value, of the shares of stock outstanding.

(4) The total amount of all bonds outstanding and all other indebtedness.

(5) The market value, or if no market value then the estimated value, of all bonds outstanding and all other indebtedness.

(6) A statement in detail of the entire gross receipts and net earnings of the company during the five calendar years next preceding the assessment date within this State, and of the entire system from all sources.

(7) The length of the first, second, third and other main tracks and all side tracks and turnouts showing the proportions within this State and elsewhere.

(8) The reproduction cost of the property within Illinois and the total reproduction cost of all property of such company. Said reproduction cost, so far as applicable, shall be as last determined by the United States Interstate Commerce Commission, or other competent authority, plus additions and betterments, less retirements and depreciation to the December 31, next preceding the assessment.

(9) An enumeration and classification of all rolling stock and car equipment owned or leased by the company filing the return. The classification shall show type of equipment and circumstances of ownership and use. The enumeration shall include rolling stock used over the track of other companies under any trackage right agreement. All other property used in connection with a trackage right agreement shall also be listed.

(10) Any other information the Department may require to determine the fair cash value of the property of any railroad company, or necessary to carry out the provisions of this Act.

Such statements or schedules shall be made in conformity to such instructions and forms as may be prescribed by the Department.

In cases where a railroad company shall use property owned by another, the return shall be made by the using company,

and all property operated under one control shall be returned as hereinbefore provided. (§ 82, as amended in 1943.)

§ 565. Interstate allocation of operating property

If any railroad company owns or uses operating property partly within and partly without this State, the commission shall determine the value of the entire operating property of such railroad but shall take only that part of such entire value as is represented by the average percentage of (a) the length of all track including main, second and additional main track, side track and turnouts within this State, (b) its gross revenues arising from railroad operations in this State, (c) the reproduction cost of its operating property within this State, as determined by the Interstate Commerce Commission of the United States, or other competent authority, plus additions and betterments, less retirements and depreciation. Provided nothing in this section shall be construed to preclude the use or substitution of such other factors or methods as may appear reasonable and necessary in determining for any railroad the proportion of its operating property or any part thereof within this State. (§ 84.)

§ 567. Distribution of assessments made by Department

The full fair cash value of the operating property and non-operating personalty of every railroad company subject to assessment shall be listed and taxed in the several taxing districts in the proportion that the length of all the track owned or used in such taxing district bears to the whole length of all the track owned or used in this state, except the value of all station houses, depots, machine shops or other buildings of an original cost exceeding $1,000, which shall be deemed to have a situs in the taxing district in which the same are located. * * * The Department shall equalize and distribute the full, fair cash value of the property of every railroad company (other than non-carrier real estate) to the respective taxing districts entitled thereto and shall certify the same to the county clerks of the respective counties *who shall extend taxes against such values the same as against other property in such taxing districts.* (§ 86, as amended in 1943.)

(Railroads taxed as real estate.)

§ 569. Record book for railroad property

The county clerk shall procure, at the expense of the county, a record book, the form to be prescribed by the Department, in which to enter railroad property as listed for taxation, and shall enter the valuations assessed, corrected and equalized in the manner provided by law; and against such assessed, corrected or equalized valuation, as the case may require, the county clerk shall extend all the taxes thereon for which said property is liable. * * * *The taxes on all railroad property*

shall be extended as on real estate, and shall be subject to the same penalties, dates of payment and methods of enforcement as other real estate taxes. (Excerpts § 88, as amended in 1945.)

As to both State and local assessed corporate stocks, fair cash value was also the standard.

§ 612. Powers of Department of Revenue

The Department shall have power:

* * * * * * *

(10) To adopt, from time to time, rules not inconsistent with law, for ascertaining *the fair cash value of the capital stock,* including the franchise, of corporations assessed by it, for ascertaining the fair cash value of railroad property assessed by it, and for the guidance of local assessment officers relative to the assessment of property for taxation. (Excerpts § 131, as amended in 1943.)

EQUALIZATION OF ASSESSMENTS BY DEPARTMENT OF REVENUE.

§ 627. Authority of Department to equalize

The Department shall act as an equalizing authority. It shall examine the abstracts of property assessed for taxation in the several counties as returned by the county clerks and shall equalize the assessments as in this Act provided. The Department shall[1] lower or raise the total assessed value of property in any county as returned by the county clerk so that such property will be assessed at its full, fair cash value.

By means of a comparison of assessed valuations, as revised by boards of review or boards of appeals, as the case may be, and estimated full, fair cash values established through the analysis of property transfers, property appraisals, and such other means as it deems proper and reasonable, the Department shall annually ascertain and determine the percentage relationship, for each county of the State, between the valuations at which locally-assessed property is listed by assessors and revised by boards of review or boards of appeals, as the case may be, and the estimated full, fair cash value of such property.

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[1] This Section ws amended in 1959 to provide for certifications of equalization factors (multipliers) only in quadrennial assessment years rather than annually, but the section remained unchanged in requiring the Department to ascertain the level of assessment which resulted from the multipliers so certified for every year.

With the ratio so ascertained and determined for each county, the Department shall then ascertain the amount to be added to or deducted from the aggregate reviewed assessment on property subject to local assessment jurisdiction in order to produce a ratio of assessed to full, fair cash value equivalent to one hundred per cent. (§ 146, as amended in 1945.)

§ 632. Certification of equalization rates and Department assessments

When the Department shall have completed its equalization of assessments for any year, it shall certify to the several county clerks the percentage finally determined by it to be added to or deducted from the listed or assessed valuation of property in the several counties, as returned by the respective county clerks. The respective assessments made by the Department on the capital stock, including the franchise, of corporations assessed by it (other than of the capital stock of railroad companies) shall be certified by it to the county clerks of the respective counties in which such companies or associations are located. And said clerk shall extend the taxes for all purposes on the respective amounts so certified, the same as may be levied on the other property in the taxing districts in which such companies or associations are located.

The Department shall also certify to the county clerks of the proper counties the assessments made by it on property owned or used by railroad companies operating within this State, and the distribution of such assessments among the respective taxing districts within the several counties. The county clerks shall extend the taxes for all purposes on the respective amounts so certified, the same as against other property in the taxing districts to which such assessments of railroad property are allocated or distributed.

The assessments on the capital stock, including the franchise, of telegraph companies shall also be certified to the county clerks by the Department. (§ 151, as amended in 1945.)

§ 675. Payment of taxes—Payments under protest

Current taxes on real property shall be payable in 2 equal installments. The collector, when so requested by the party paying the taxes, shall receive and receipt for such taxes in installments. * * *

If any person desires to object pursuant to the provisions of Section 235 of this Act,[1] to all or any part of a real property tax for any year, for any reason other than that the real estate is not subject to taxation, he shall first pay all of said tax installments due, and such payment shall be accompanied by a (written protest) * * *

The person paying real estate taxes under protest shall appear in the next application for judgment and order of sale and object to the taxes in relation to which the protest is made,

and upon his failure so to do, the protest shall be waived, and judgment and order of sale entered for any unpaid balance of such taxes. * * *

In all counties, when the taxpayer appears and files objection, the court shall, after first determining that due notice, if required, has been given to the tax levying unit, hear and determine the matter according to the right of the case and enter judgment for any part of the taxes, or order a refund of any part of the taxes, so paid under protest. Appeals shall lie from such orders of the court as in other cases of objection to judgment and order of sale for taxes. * * * (Excerpts of § 194, as amended in 1957.)

§ 716. Proceedings by court—Form of order—Cure of error or informality

The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be: * * * (Excerpt § 235.)

APPENDIX C

CLASS I RAILROADS: NET OPERATING INCOME, CAPITAL EXPENDITURES AND PERCENTAGE OF DOMESTIC INTERCITY FREIGHT TRAFFIC 1950-1961*

	1950	1955	1957	1958	1959	1960	1961
Net Railway Operating Income (Millions).....	$1,040	$1,120	$923	$762	$748	$585	$538
Expenditures for Capital Improvements (Millions):							
Equipment	779	568	1,008	480	568	633	427
Roadway & Structures..	386	340	387	258	250	286	219
% of Total Volume of Intercity Freight Traffic as compared to other means of transportation.....	57.44%	50.43%	47.62%	46.68%	45.68%	44.32%	43.86%
Average mi. of road operated in 000s.....	150	NA	112	NA	NA	88	85

NA means not available from Obj. Exh. 78.

APPENDIX D

COMPARISON OF SALES TO ASSESSMENTS FOR RAILROADS OMITTED FROM PEOPLE'S EX. NO. 1

Railroad	System Mileage	Yr. of Sale	Selling Price Ill. Operating Property	Assessment	Asmts. ÷ Straight Av. of 3 Value Indicators*	Assessment ÷ by Selling Price
Burlington R. R. Co.	7,972	1961	$120,761,956	$140,450,000	76%	116%
Baltimore & Ohio R. R. Co.	5,600	1961-64	25,875,920	26,565,000	82%	102%
Mpls. & St. Louis R. R. Co.	1,506	1960	3,913,977	3,900,000	68%	99%
Illinois Terminal R. R. Co.	344	1954	17,911,450	19,200,000	83%	107%
Illinois Northern R. R. Co.	10	1949	960,000	1,200,000	75%	129%
Indiana Harbor Belt R. R. Co.	N.A.	1961	11,075,950	12,950,000	70%	117%
Average						115%

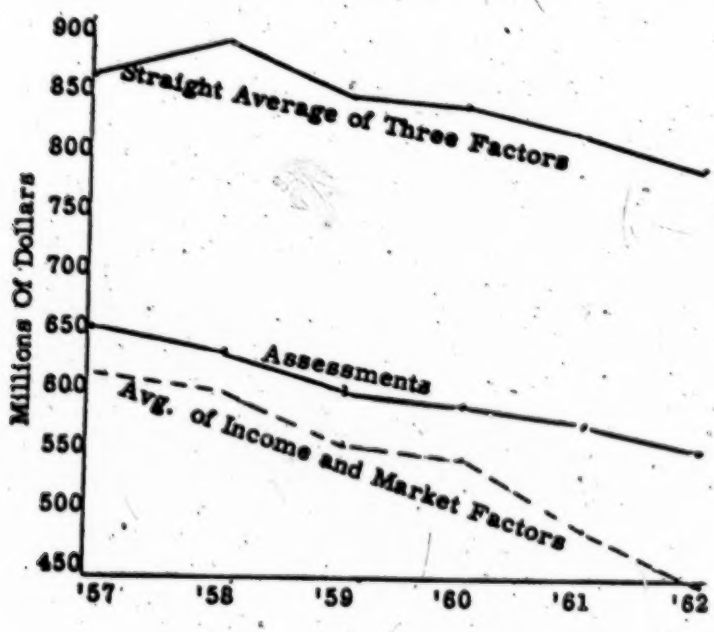
APPENDIX E

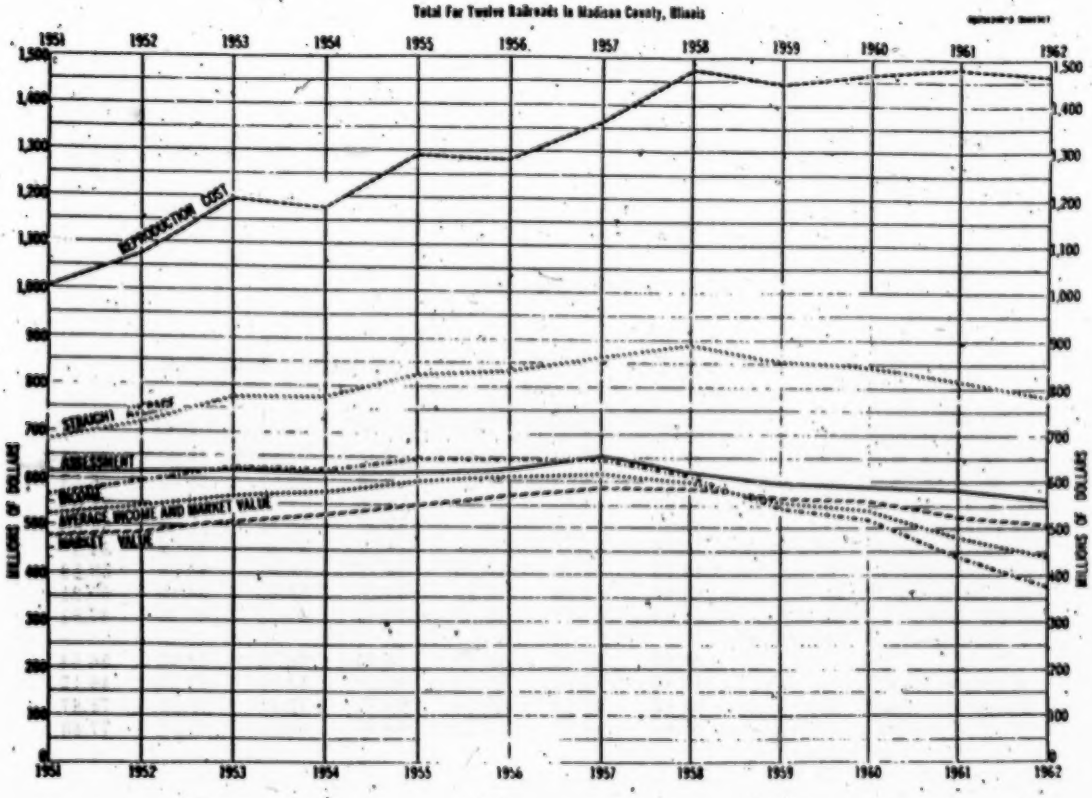
COMPARATIVE WEIGHT OR INFLUENCE OF REPRODUCTION COST FACTOR IN STRAIGHT FORMULAIC AVERAGE*

Railroad	1957	1958	1959	1960	1961	1962	1963
G. M. & O. R. R. Co.	50.6 %	55.38%	56.59%	58.61%	61.64%	63.00%	60.43%
C. B. & Q. R. R. Co.	50.94	54.29	55.44	56.04	56.81	58.39	55.53
C. & N. W. R. R. Co.	70.52	72.31	71.1	71.58	74.8	72.33	72.07
C. & E. I. R. R. Co.	48.11	50.13	51.	51.52	56.42	60.56	56.56
Alton & Southern R. R. Co.	20.66	21.81	23.54	24.65	27.21	27.78	24.8
Ill. Central.....	46.85	49.78	52.28	54.17	58.92	60.99	59.58
Ill. Terminal R. R. Co.	43.67	47.60	55.54	58.28	56.63	54.19	60.21
NYC & St. L. R. R. Co.	38.93	41.38	40.48	41.09	41.52	44.23	47.91
Terminal R. R. Assoc. of St. L.	46.68	49.03	49.54	48.96	50.75	52.20	56.54
Wabash R. R.	46.00	48.38	46.80	49.89	53.50	57.98	49.15
Pennsylvania R. R.	61.63	63.92	66.18	67.71	72.26	75.31	75.87
NYC R. R. Co.	59.45	61.58	63.71	63.62	68.52	72.35	77.85

APPENDIX F

GRAPHS ILLUSTRATING REASONABLE EXERCISE OF RAILROAD ASSESSMENT AUTHORITY BY DEPARTMENT OF REVENUE





APPENDIX G

ASSESSMENTS OF ILLINOIS RAILROADS
1938-1962
(Amounts in Thousands of Dollars)

	Class I Railroads		All Railroads	
	Equalized*	100% Full Value	Equalized*	100% Full Value
1938	$ 252,248	$ 633,120	$ 346,231	$ 948,616
1939	249,174	623,817	347,526	928,058
1940	220,459	629,884	318,477	909,936
1941	220,731	630,659	318,482	909,949
1942	220,740	668,909	315,065	954,742
1943	391,271	724,576	550,094	1,018,693
1944	374,008	733,350	520,147	1,019,897
1945	363,874	791,031	492,196	1,069,992
1946	.....	823,779	.....	1,093,746
1947	.....	819,924	.....	1,077,459
1948	.....	840,145	.....	1,078,971
1949	.....	843,168	.....	1,086,196
1950	.....	830,400	.....	1,075,593
1951	.....	837,510	.....	1,084,964
1952	.....	840,075	.....	1,088,193
1953	.....	848,200	.....	1,096,730
1954	.....	844,840	.....	1,090,815
1955	.....	847,995	.....	1,095,390
1956	.....	849,320	.....	1,098,034
1957	.....	856,150	.....	1,107,399
1958	.....	849,645	.....	1,090,335
1959	.....	824,830	.....	1,055,263
1960	.....	809,200	.....	1,032,528
1961	.....	805,020	.....	1,027,008
1962	.....	785,525	.....	998,361

* No equalization after 1945.

APPENDIX H.

Table Comparing Assessments in a Particular Year With the Immediately Preceding Year's Assessment to Show Lack of Uniform Treatment of Railroads by Assessing Officials and the Absence of a Policy of "HOLDING THE LINE".

(Source: For years 1935 through 1938 sources are Tax Commission Official Reports in evidence; for years 1939 and 1940 the 22 assessments shown are from Krucks' Exhibit of assessment history of 22 Class I Railroads, but the high and low percentage assessments are from the Department Reports; from 1941 through 1951 the 22 railroads are those shown on the Krucks' Exhibit and the reader is referred to the name of the railroad for the high increase and the high decrease percentages; for the years 1952 and 1953 and 1955 through 1961 the number of railroads shown are taken from the Department of Revenue Tables in evidence as noted, which are in consecutive tables; the 1954 assessment compared with 1953 takes all railroads appearing on both tables into account, not just Class I railroads, to determine if a larger sample would have any effect on the remainder of the exhibit, which it did not seem to have. Data for making the 1961-1962 computations is not in the record.)

Years Compared	Source of Info.	RR Included in Table	No. of Ass'ts Increased	No. of Ass'ts Decreased	No. of Ass'ts Not Changed	High % of Incr.	High % of Decr.
1936 to 1935 (Assessments)	A 283	All Roads	28	49	3	62%	27.5%
1937 to 1936 (Assessments)	B 284	All Roads	35	39	5	37%	30%
1938 to 1937 (Full value from now forward)	B 284 (Table xi)	Class I	11	20	0	31% (T.P.&W.)	12% (Chi., Ind. & Louisville)
1939 to 1938	D C 286	22 Class I	11	11	0	34.49%	24.08%
1940 to 1939	D C 287	22 Class I	12	7	3	135.29%	47.54%
1941 to 1940	D	22 Class I	10	7	5	5% (C&NW)	7% (Wab.)
1942 to 1941	D	22 Class I	21	1	0	11% (C&NW)	2% (Nickel Plate)
1943 to 1942	D	22 Class I	21	1	0	13% (C&NW)	1% (I. C.)
1944 to 1943	D	22 Class I	12	5	5	5% (C&NW)	12.5% (So.)
1945 to 1944	D	22 Class I	17	4	1	23% (Mo. (Pac.	7% (Soo)
1946 to 1945	D	22 Class I	19	2	1	6% (I. C.)	18% (T. P. & W)
1947 to 1946	D	22 Class I	3	7	12	5% (Wab)	14% (T.P.&W)
1948 to 1947	D	22 Class I	10	5	7	11% (TP& W)	8% (Penn.)

Years Compared	Source of Info.	RR Included in Table	No. of Ass'ts Increased	No. of Ass'ts Decreased	No. of Ass'ts Not Changed	High % of Incr.	High % of Decr.
1949 to 1948	D	22 Class I	5	2	15	20% (TP& W)	2% (Penn.)
1950 to 1949	D	22 Class I	5	10	7	10% (TP& W)	5% (N. Y. C.)
1951 to 1950	D	22 Class I	14	4	4	18% (C&O)	3% (Penn.)
1952 to 1951	F E	All Class I	19	5	5	12% (C&O)	1% (Ill. Term)
1953 to 1952	G	All Class I	26	10	2	31% (C&O)	3% (Ill. Term)
1954 to 1953	H	All RR's Assessed by State	5	49	17	5% (Ind. Har. Belt)	4% (Mil. Rd.)
1955 to 1954	I	Class I	23	4	11	5% (C&EI)	4% (C&NW)
1956 to 1955	J	Class I	20	3	16	10% (C&O)	6% (Ill. Term)
1957 to 1956	K	Class I	28	4	5	6% (C&EI)	6% (C&NW)
1958 to 1957	L	Class I	1	28	9	0.7% (C& NW)	9% (Union Station)
1959 to 1958	M	Class I	0	34	4	None	9% (Chicago River & Ind.)
1960 to 1959	N	Class I	4	27	8	2% (St. L. Southwestern)	10% (Chicago & W. Ind.)
1961 to 1960	O	Class I	5	31	1	5% (St. L. Southwestern)	3% (Wab.)

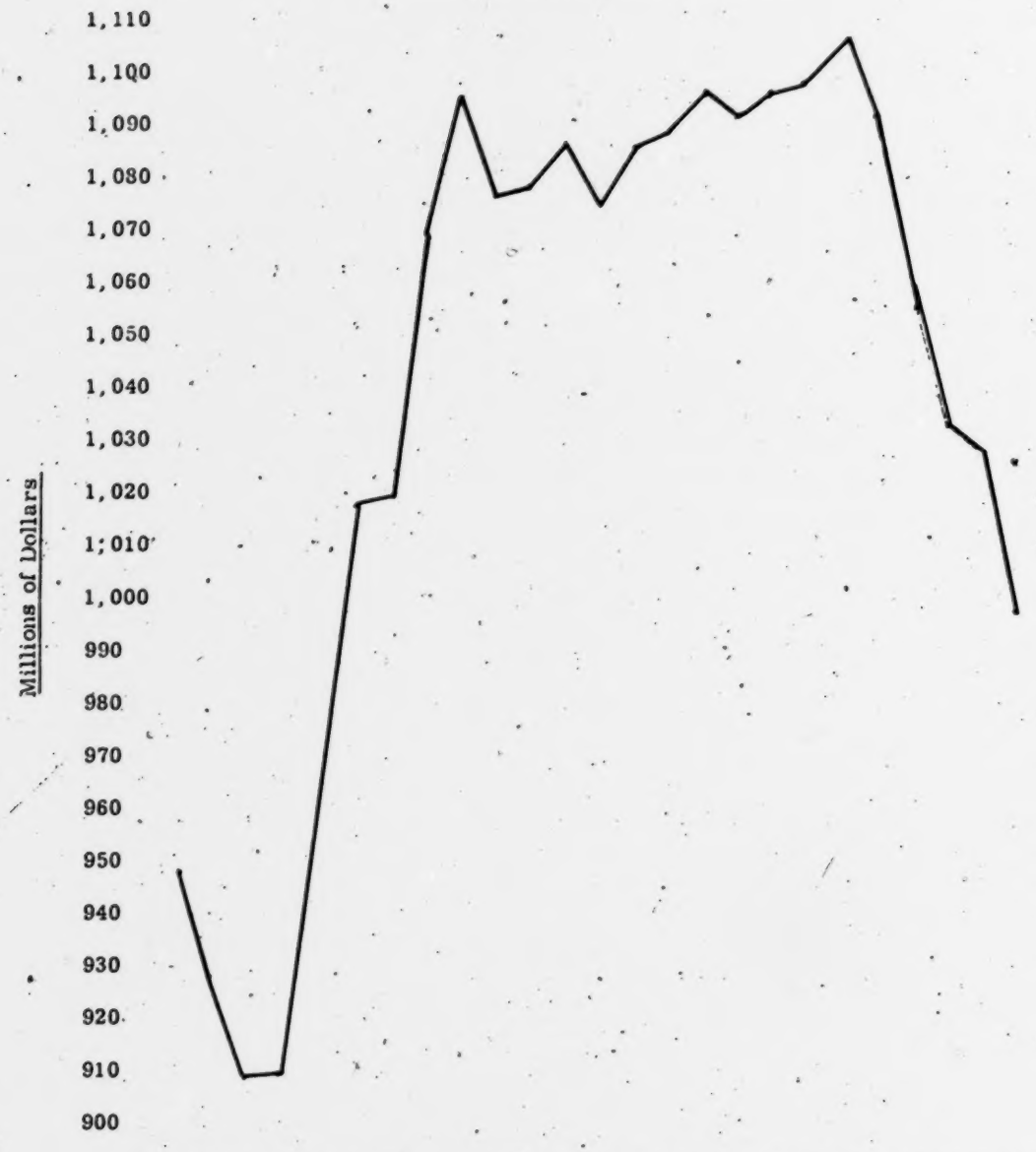
Sources:

A. Coll. Exh. 36, Pages of Abst. Vol II as Noted.
B. Coll. Exh. 37, Pages of Abst. Vol II as Noted.
C. Coll. Exh. 38, Pages of Abst. Vol II as Noted.
D. Obj. Exh. 103, Abst. Vol II, 219-21.
E. Coll. Exh. 5, Abst. Vol II, 273.
F. Coll. Exh. 6, Abst. Vol. II, 274.
G. Obj. Danis Exh. 1A, Abst. Vol II, 240.
H. Coll. Exh. 8, Abst. Vol. II, 275.
I. Obj. Danis Exh. 1B, Abst. Vol II, 241.
J. Coll. Exh. 10, Abst. Vol II, 276.
K. Obj. Exh. 38A, Abst. Vol II, 85.
L. Obj. Exh. 38C, Abst. Vol II, 87.
M. Obj. Exh. 38E, Abst. Vol II, 89.
N. Obj. Exh. 38G, Abst. Vol II, 91.
O. Obj. Exh. 38I, Abst. Vol II, 93.

APPENDIX I

"FAIR CASH VALUE" OF RAILROAD OPERATING PROPERTY IN ILLINOIS 1938 - 1962 *

Total - All Major Class I Railroads

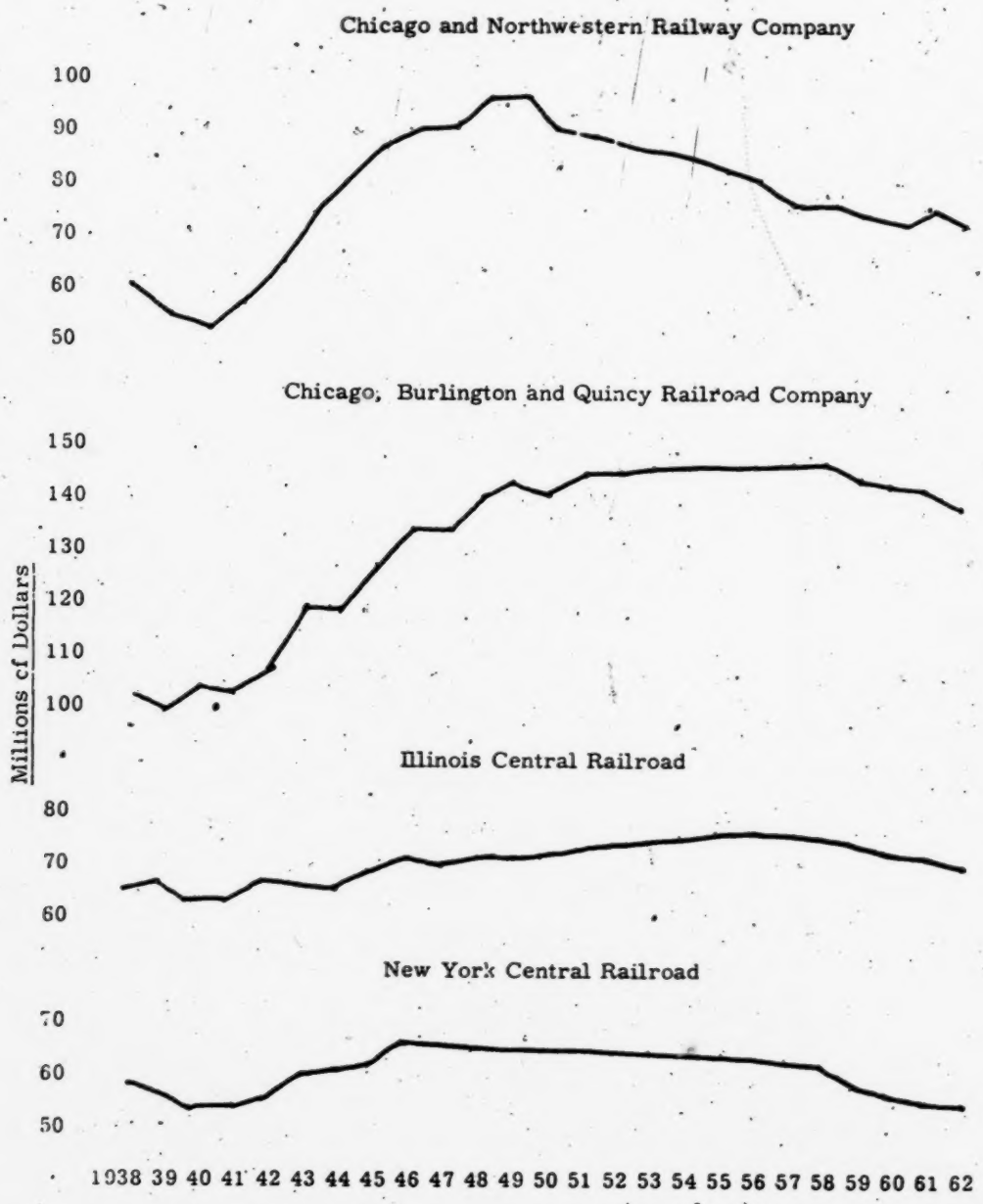


* Source: Objectors' Exhibit 103 and Collector's Exhibit 59A.

APPENDIX J

INDIVIDUAL GRAPHS SHOWING FLUCTUATIONS IN RAILROAD ASSESSMENTS, 1938-1962

FAIR CASH VALUE OF OBJECTORS' OPERATING PROPERTY IN ILLINOIS 1938 - 1962 *



*(Source: Objectors' Exhibit 103. Alton and Southern Railroad and Terminal Railroad Association are not included because they are not Major Class I railroads.)

APPENDIX J (Cont'd)